



**SO ORDERED.**

**SIGNED January 03, 2006.**

A handwritten signature in cursive script, reading "Gerald H. Schiff", is positioned above the printed name.

**GERALD H. SCHIFF  
UNITED STATES BANKRUPTCY JUDGE**

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**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF LOUISIANA**

**IN RE:**

**BRETT G. ROMERO  
PEGGY LANDRY ROMERO**

**CASE NO. 00-51830**

**Debtors**

**CHAPTER 13**

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**MEMORANDUM RULING**  
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Brett and Peggy Romero ("Debtors") filed a voluntary petition for relief under chapter 13 of the Bankruptcy Code on September 13, 2000. Keith A. Rodriguez ("Trustee") is the standing chapter 13 trustee.

On October 20, 2004, after notice and a hearing, the court entered an order sustaining the Debtors' Objection to Claim of HomeEq Servicing Corporation ("Homeq"), which order fixed the balance due Homeq at \$4,752.00. On October 25, 2004, the court entered an order granting the Debtors a hardship discharge pursuant

to section 1328(b). The case was subsequently closed on January 14, 2005.

Homeq then filed a Motion to Reopen Case and Motion to Reconsider the Order Granting Objection to Claim. At a hearing on May 11, 2005, the court denied both motions. Homeq then filed a Motion to Reconsider that ruling. On June 8, 2005, the court granted the last motion and refixed both the Motion to Reopen Case and Motion to Reconsider the Order Granting Objection to Claim for hearing. Following a hearing, both matters were taken under advisement.

#### **JURISDICTION**

The case has been referred to this court by the Standing Order of Reference entered in this district which is set forth as Rule 83.4.1 of the Local Rules of the United States District Court for the Western District of Louisiana. No party in interest has requested a withdrawal of the reference. The court finds that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

These Reasons for Decision constitute the Court's findings of fact and conclusions of law pursuant to Rule 7052, Federal Rules of Bankruptcy Procedure.

#### **BACKGROUND**

The mortgage on the Debtors' residence was originally held by TMS Mortgage, Inc. ("TMS"). On October 16, 2000, O. Byron Meredith,

III, filed a notice of appearance and request for notice on behalf of TMS. The request for notice indicated that copies of notices should be served upon Mr. Meredith as well as TMS with specific addresses in Atlanta, Georgia. TMS filed a proof of claim in this case on October 17, 2000, in the amount of \$15,566.76. The address for TMS noted on the proof of claim was 4111 South Darlington, Tulsa, Oklahoma. At some point during the bankruptcy proceeding, TMS was merged into Homeq.

The Objection to Claim filed by the Debtors was served upon Homeq Servicing Corp., P. O. Box 13716, Sacramento, California. The Notice of Hearing indicates that the notice was mailed on September 24, 2004, for a hearing to be held on October 20, 2004, if a timely objection was filed.

Rule 3007 requires that "A copy of the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claimant . . . at least 30 days prior to the hearing."

Homeq asserts that the Order on the Objection to Proof of Claim should be set aside because the length of notice was insufficient and because the service upon the creditor was improper.

The creditor filed a proof of claim in this matter in the amount of \$15,566.76 with \$1,164.14 of that amount consisting of pre-petition arrearages. The Debtors' confirmed chapter 13 plan

provided for the Trustee to pay both the arrearage claim and the regular monthly payments. According to the Trustee's records, \$180.00 in principal and \$23.22 in interest was paid toward the arrearage claim and \$7,748.00 was paid on regular monthly payments. Debtors' regular monthly payment was \$179.48. The first monthly mortgage payment due under the plan was due on October 1, 2000. From that time until the filing of the proof of claim in September 2004, a total of forty-eight (48) monthly payments were due totaling \$8,615.04.

Clearly the Objection to Claim filed by the Debtors was defective. The figures stated in the Objection to Claim are incorrect, the Objection to Claim was improperly served, and there was insufficient time delays given for responding to the Objection to Claim. The Motion for Reconsideration is therefore well-founded and must be granted.

Accordingly, the Motion to Reopen Case is **GRANTED**. The Motion to Reconsider the Order Granting Objection to Claim is **GRANTED** and the Order entered on October 20, 2004 regarding the Debtors' Objection to Claim is **VACATED**.

**IT IS SO ORDERED.**

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